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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,331	10/10/2003	Timothy M. Garrison	3356-148	9249
24256	7590	08/17/2005	EXAMINER	
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			KEASEL, ERIC S	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/684,331	Applicant(s) GARRISON ET AL.	
	Examiner Eric Keasel	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 30-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13-19, 21 and 26-29 is/are rejected.
- 7) ☒ Claim(s) 9-12, 20 and 22-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/13+10/20/04, 3/28/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Invention I and Species A in the reply filed on May 16, 2005 is acknowledged. The traversal is on numerous grounds. Applicant argues that the groupings are related such that the same search would be required for all the groups. This is not found persuasive because applicant has presented 12 independent and 79 total claims directed to very differing subject matter as outlined in the restriction requirement. To search such disparate subject matter such as spouts, tubes, nozzles, liquid-level sensor valves, etc. within a single application is a substantial burden on the examiner. Applicant argues that it will be less expensive for applicant if the restriction is not required. This is not a proper ground for a traversal. Applicant argues that the examiner has established that the inventions are distinct, but has not shown that the inventions are independent. 35 U.S.C. 121 states that the Commissioner may require restriction if two or more "independent and distinct" inventions are claimed in one application. In 37 CFR 1.141, the statement is made that two or more "independent and distinct inventions" may not be claimed in one application. This raises the question of the subjects as between which the Commissioner may require restriction. This, in turn, depends on the construction of the expression "independent and distinct" inventions. "Independent", of course, means not dependent. If "distinct" means the same thing, then its use in the statute and in the rule is redundant. If "distinct" means something different, then the question arises as to what the difference in meaning between these two words may be. The hearings before the committees of Congress considering the codification of the patent laws indicate that 35 U.S.C. 121: "enacts as law existing practice with respect to division, at the same time introducing a number of

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changes.” The report on the hearings does not mention as a change that is introduced, the subjects between which the Commissioner may properly require division. The term “independent” as already pointed out, means not dependent. A large number of subjects between which, prior to the 1952 Act, division had been proper, are dependent subjects, such as, for example, combination and a subcombination thereof; as process and apparatus used in the practice of the process; as composition and the process in which the composition is used; as process and the product made by such process, etc. If section 121 of the 1952 Act were intended to direct the Commissioner never to approve division between dependent inventions, the word “independent” would clearly have been used alone. If the Commissioner has authority or discretion to restrict independent inventions only, then restriction would be improper as between dependent inventions, e.g., the examples used for purpose of illustration above. Such was clearly not the intent of Congress. Nothing in the language of the statute and nothing in the hearings of the committees indicate any intent to change the substantive law on this subject. On the contrary, joinder of the term “distinct” with the term “independent”, indicates lack of such intent. The law has long been established that dependent inventions (frequently termed related inventions) such as used for illustration above may be properly divided if they are, in fact, “distinct” inventions, even though dependent.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 30-79 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and/or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 16, 2005.

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3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

4. Claim 1 is objected to because in line 8, it appears that "sidewell" should be "sidewall". Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7 and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Howell (US Patent Number 2,004,203).

Howell discloses a spout assembly for dispensing liquid from a nozzle, comprising: a) a structural conduit including: i) a first end portion (i.e. the upstream portion) for attaching relative to a nozzle body and a second end portion (i.e. the downstream portion) for dispensing liquid; ii) an interior passage providing an internal flow path from the first end portion (in the area near cross-section 3 shown in Fig. 1) to the second end portion; and iii) at least one internal sidewall, the internal sidewall including a first sidewall portion with a first cross-sectional dimension (in the area near cross-section 3 shown in Fig. 1), a second sidewall portion (in the narrow section of

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27) with a second cross-sectional dimension that is smaller than the first cross-sectional dimension, and a transition location (the tapered portion towards the top of 27) between the first and second sidewall portions, wherein the transition location provides for the change in cross-sectional dimensions between the first sidewall portion and the second sidewall portion, the first sidewall portion includes a length at least partially defining a substantially straight liquid flow path, wherein the substantially straight liquid flow path extends through the transition location without the transition location changing the substantially straight liquid flow path; wherein the first and second sidewall portions each have a substantially circular cross-sectional shape wherein the first and second cross-sectional dimensions comprise respective diameters of the first and second sidewall portions; wherein the transition location comprises a third sidewall portion of the internal sidewall that further defines the substantially straight liquid flow path; wherein the first and third sidewall portions each have a substantially circular cross-sectional shape; wherein the substantially circular cross-sectional shape of the first sidewall portion defines a diameter and wherein successive cross sections of the third sidewall portion along the substantially straight liquid flow path define a plurality of substantially circular cross-sectional shapes defining a plurality of successively smaller diameters; wherein a lower portion of each of the cross-sectional shapes of the first and third sidewall portions at least partially define the substantially straight liquid flow path; and wherein the second sidewall portion of the interior sidewall includes a substantially straight portion and an angular portion, wherein the angular portion provides an angular orientation between the first sidewall portion and the substantially straight portion of the second sidewall portion.

7. Claims 1-8, 13-19, 21, and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Garrison et al. (US Patent Number 6,024,140).

Garrison et al. disclose a spout assembly (see the embodiment of Figs. 7 and 8) for dispensing liquid from a nozzle, comprising: a) a structural conduit including: i) a first end portion (i.e. the portion upstream of the tapered transition portion) for attaching relative to a nozzle body and a second end portion (i.e. the downstream portion) for dispensing liquid; ii) an interior passage providing an internal flow path from the first end portion to the second end portion; and iii) at least one internal sidewall, the internal sidewall including a first sidewall portion with a first cross-sectional dimension, a second sidewall portion (near leader line 148) with a second cross-sectional dimension that is smaller than the first cross-sectional dimension, and a transition location (the tapered portion) between the first and second sidewall portions, wherein the transition location provides for the change in cross-sectional dimensions between the first sidewall portion and the second sidewall portion, the first sidewall portion includes a length at least partially defining a substantially straight liquid flow path, wherein the substantially straight liquid flow path extends through the transition location without the transition location changing the substantially straight liquid flow path; wherein the first and second sidewall portions each have a substantially circular cross-sectional shape wherein the first and second cross-sectional dimensions comprise respective diameters of the first and second sidewall portions; wherein the transition location comprises a third sidewall portion of the internal sidewall that further defines the substantially straight liquid flow path; wherein the first and third sidewall portions each have a substantially circular cross-sectional shape; wherein the substantially circular cross-sectional shape of the first sidewall portion defines a diameter and

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wherein successive cross sections of the third sidewall portion along the substantially straight liquid flow path define a plurality of substantially circular cross-sectional shapes defining a plurality of successively smaller diameters; wherein a lower portion of each of the cross-sectional shapes of the first and third sidewall portions at least partially define the substantially straight liquid flow path; wherein the second sidewall portion of the interior sidewall includes a substantially straight portion and an angular portion, wherein the angular portion provides an angular orientation between the first sidewall portion and the substantially straight portion of the second sidewall portion; and further comprising a spout adapter mounted with respect to the first end portion of the structural conduit, the spout adapter including a pressure activated control valve (158) adapted to permit flow of liquid into the spout assembly from a nozzle at a predetermined liquid pressure.

8. Claims 1-8, 13-19, 21, and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Butterfield et al. (US Patent Number 5,549,132).

Butterfield et al. disclose a spout assembly for dispensing liquid from a nozzle, comprising: a) a structural conduit including: i) a first end portion (i.e. the portion upstream of the tapered transition portion) for attaching relative to a nozzle body and a second end portion (i.e. the downstream portion) for dispensing liquid; ii) an interior passage providing an internal flow path from the first end portion to the second end portion; and iii) at least one internal sidewall, the internal sidewall including a first sidewall portion with a first cross-sectional dimension, a second sidewall portion with a second cross-sectional dimension that is smaller than the first cross-sectional dimension, and a transition location (the tapered portion) between the first and second sidewall portions, wherein the transition location provides for the change in

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cross-sectional dimensions between the first sidewall portion and the second sidewall portion, the first sidewall portion includes a length at least partially defining a substantially straight liquid flow path, wherein the substantially straight liquid flow path extends through the transition location without the transition location changing the substantially straight liquid flow path; wherein the first and second sidewall portions each have a substantially circular cross-sectional shape wherein the first and second cross-sectional dimensions comprise respective diameters of the first and second sidewall portions; wherein the transition location comprises a third sidewall portion of the internal sidewall that further defines the substantially straight liquid flow path; wherein the first and third sidewall portions each have a substantially circular cross-sectional shape; wherein the substantially circular cross-sectional shape of the first sidewall portion defines a diameter and wherein successive cross sections of the third sidewall portion along the substantially straight liquid flow path define a plurality of substantially circular cross-sectional shapes defining a plurality of successively smaller diameters; wherein a lower portion of each of the cross-sectional shapes of the first and third sidewall portions at least partially define the substantially straight liquid flow path; wherein the second sidewall portion of the interior sidewall includes a substantially straight portion and an angular portion, wherein the angular portion provides an angular orientation between the first sidewall portion and the substantially straight portion of the second sidewall portion; and further comprising a spout adapter mounted with respect to the first end portion of the structural conduit, the spout adapter including a pressure activated control valve (82) adapted to permit flow of liquid into the spout assembly from a nozzle at a predetermined liquid pressure.

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Allowable Subject Matter

9. Claims 9-12, 20, and 22-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Slattery, Plantard, and Mitchell disclose spouts that anticipate at least claim 1.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 25 JUL 2005
Eric Keasel
Primary Examiner
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